Highlights of the 415 Regulations

After more than 20 years of statutory and regulatory changes, the 415 rules will all be in one place. Containing all of the rules on maximum benefits and contributions, the proposed 415 regulations – when finalized – will provide the benefits community with a one-stop resource for their questions on this oft confusing section of the Code.

The *Employee Plans News* was fortunate to spend some time with Marty Pippins, Manager of EP Technical Guidance and Quality Assurance, and get his insights on the new regulations. Here are some of Mr. Pippins's comments:

- **Multiple Annuity Starting Dates** – "One perennial question has been how to handle a prior distribution from several years ago (perhaps from a different plan) in figuring out "how much room" is left in the 415 limit in the current year. The regulations provide explicit methodologies for making this computation, regardless of whether the prior distributions were in annuity form or were lump sum distributions."

- **Qualified Joint & Survivor Annuities** – "Currently, pursuant to section 415(b)(2)(B), there's an exception from the limitations of section 415 for the survivor annuity portion of a QJSA. If benefits are paid partially in the form of a QJSA and partially in some other form, such as a lump sum, the new rule would continue the exception on the portion of the benefit paid in the form of a QJSA, rather than the old rule which had no exception at all if a portion was paid in the form of a lump sum."

- **EPCRS** – "The correction mechanism in the current 415 limitations will be removed and placed in EPCRS in the future."

- **Post-Severance Compensation** – "Compensation for purposes of section 415(c)(3) can include Post-Severance Compensation if it's paid within 2-1/2 months after separation from service. But this is only for payments that would have been paid if the participant had continued in employment or if they are for bona fide sick, vacation and other leave. The leave-related severance payments can be included only if the employee could have used the leave had employment continued. Conforming amendments are made to regulations under sections 401(k), 403(b), and 457. This portion of the regulations is proposed effective for limitation years beginning on or after January 1, 2005. Taxpayers can rely on this portion of the regulations until final regulations are issued."

Expanding on his prior comments in the June 2, 2005 Special Edition, Mr. Pippins said that the proposed regulations also contain some "tightener" provisions such as:

- **Calculation of Average Compensation** – "The regulations propose to interpret the calculation of the high 3-year average compensation for defined benefit plan limitations in the clearest statutory sense possible. That is, it will be based on years in which the participant was an active participant in the plan, rather than the current rule in the regulations that the calculation is based on years of service (which could include pre-participation years)."

- **Relationship with Section 401(a)(17)** – "The interaction of sections 415 and 401(a)(17) is clarified, such that the definition of compensation used in determining the average compensation for a participant's high 3-consecutive years cannot reflect compensation in excess of the section 401(a)(17) limit for any year."

With regard to amendments, Mr. Pippins said, "Generally, plans will have to be amended to reflect the new regulations once they're finalized. Most of the regulations affect defined benefit plans and the plan is to finalize the 415 regs before pre-approved plans come in for opinion and advisory letters beginning February 1, 2007. Individually designed plans will be amended for the regulations upon finalization and if the regulation is on the applicable Cumulative List of Guidance. Pre-approved defined contribution plans will not need to be amended until the next six-year cycle beginning in 2011. Except for the post-severance compensation rules mentioned above, these regulations aren't effective until finalization."

As for the consolidation of the heretofore scattered rules, Mr. Pippins said, "These regulations bring together a plethora of issued guidance and statutory updates to section 415 that have occurred since the 1980s, including many changes made by EGTRRA. This is an attempt by the IRS and the Department of Treasury to provide one-stop shopping with all the rules in one place."•